IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1045 of 2007
With
SPECIAL CRIMINAL APPLICATION No. 1047 of 2007
With
SPECIAL CRIMINAL APPLICATION No. 1048 of 2007
With
SPECIAL CRIMINAL APPLICATION No. 1049 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL KALIDAS JOITARAM - Applicant(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

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Appearance :
MR SUNIL M AGRAWAL for Applicant(s) : 1,
Mr. RC Kodekar, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/06/2007
ORAL JUDGMENT

Rule. Shri RC Kodekar, learned APP waives service of Rule on behalf of the State.

As common question of law and facts arise in this group of Special Criminal Applications, they are being disposed of by this common judgment and order.

2. All the petitioners are accused in Criminal Complaint, being C.R. No. I-8 of 2006 registered with CID Crime, Gandhinagar, for the offences punishable under Section 409, 465, 467, 471, 477A, 120-B of the Indian Penal Code. All the petitioners were granted anticipatory bail by learned Judge, City Civil Court at Ahmedabad and thereafter they were released on regular bail by learned Chief Metropolitan Magistrate, Ahmedabad, vide order dated 12th January 2007. The State of Gujarat has filed four different Criminal Misc. Applications for cancellation of bail granted to the respective petitioners by the learned Chief Metropolitan Magistrate, Ahmedabad. All those applications were placed before learned Additional City Sessions Judge, Court No.8 at Ahmedabad, Shri M.T. Unadkat for hearing on

22.1.2007 and thereafter the same came to be adjourned time and again and on 30th March 2007 the same came to be adjourned to 2nd April 2007. It is the case on behalf of the petitioners that from 1.4.2007 the Court business changed and the business of Criminal Misc. Applications was alloted to learned Additional City Sessions Judge at Ahmedabad, Shri P.P. Bhatt. On 2.4.2007 all the aforesaid Criminal Misc. Applications were placed for hearing before the learned Additional City Sessions Judge, Court No. 8, Ahmedabad, Shri M.T. Unadkat however according to the petitioners as the Court business was changed and the business of Criminal Misc. Applications was allotted to another Court No.6 at Ahmedabad, Shri P.P. Bhatt the said applications could not have been heard by the learned Additional City Sessions Judge at Ahmedabad, Shri M.T. Unadkat and therefore the respective petitioners submitted an application to send the Criminal Misc. Applications back to the Criminal Department for placing the same before the

learned Additional City Sessions Judge, Ahmedabad, Shri P.P. Bhatt. The said applications were submitted vide Exhibit 8. All the applications in the respective Criminal Misc. Applications came to be rejected by the learned Additional City Sessions Judge, Court No.8, Shri M.T. Unadkat vide order dated 19th April 2007. The learned Additional City Sessions Judge, Court No.8 Shri M.T.Unadkat while dismissing the aforesaid applications also observed that in another criminal case being Criminal Misc. Application No. 4626 of 2006 written arguments were submitted by the original-accused and it was kept for final decision along with other matters as common question was involved in all the cases as regards the competence of the learned Magistrate granting bail under Section 409 of the Indian Penal Code punishable with imprisonment for life. The learned Additional City Sessions Judge, Court No.8, Shri Unadkat also observed that the accused persons are at liberty to get transfer of these matters by adopting necessary

procedure i.e. By submitting appropriate applications before the learned Principal City Sessions Judge. It appears that thereafter all the petitioners herein submitted applications being Criminal Misc. Applications No. 1605 of 2007, 1623/2007, 1624/2007, 1625/2007 and 1626/2007 before the learned Principal Judge to withdraw the main Criminal Misc. Applications pending in the Court of Additional City Sessions Judge, Court No.8, Shri M.T. Unadkat and allotted the same to the Court having business, i.e., to the Court of learned Additional City Sessions Judge, Court No.6, Shri P.P. Bhatt. All these applications came to be heard by the learned Principal City Sessions Judge,who by his common order dated 9th May 2007 dismissed all the applications by observing that learned Judge, Court No.8 Shri M.T. Unadkat has kept with him the abovereferred Misc. Criminal Applications as they were heard on 31.3.2007. Being aggrieved and dissatisfied with the common order dated 9th May 2007 passed by the learned Principal City

Sessions Judge in Criminal Misc. Applications No. 1605 of 2007, 1623/2007, 1624/2007, 1625/2007 and 1626/2007 the petitioners have preferred the present Special Criminal Applications.

3. Shri RM Agrawal, learned advocate appearing on behalf of the respective petitioners has submitted that in the Rojkam there was no mention by the learned Additional City Sessions Judge, Court No. 8 at Ahmedabad Shri M.T. Unadkat that the matter is part-heard and when the business is changed the Criminal Misc. Applications are not required to be heard by the learned Additional City Sessions Judge, Court No.8 Shri M.T. Unadkat and are required to be transferred and/or heard by learned Additional City Sessions Judge, Shri P.P. Bhatt who is allotted the work of Criminal Misc. Applications with effect from 1.4.2007. It is submitted by Mr. Agrawal that it is only the learned Principal City Sessions Judge who can allot the work and/or the business and even otherwise as per the Roster

the matters are to be placed before the appropriate Court, i.e., in the present case the learned Additional City Sessions Judge, Ahmedabad, Court No.6, Shri P.P. Bhatt and therefore it is submitted that the Criminal Miscellaneous Applications No. 335/2007, 336/2007, 337/2007 and 756/2007 are required to be transferred from the Court of Additional City Sessions Judge, Court No.8 Shri M.T. Unadkat to the Court of learned Additional City Sessions Judge, Court No.6 Shri P.P. Bhatt. Shri Agrawal has heavily relied upon a judgment of the Hon'ble Supreme Court in the case of S***tate of Rajasthan Vs. Prakash Chand And Others,*** reported in **(1998) 1 SCC Page 1** in particular Para No.4 thereof as well as decision of learned Single Judge of this Court in the case of ***Gambhirsinhji Bhavsinhji Padheriya vs. State of Gujarat,*** reported in ***34 (1) GLR Page 649*** in support of his above submission and prayer. It is also further submitted by him that the concerned Judge cannot retain the matter though the business is changed

and he cannot retain the same though in the Rojkam “PART HEARD” is not mentioned without permission of the Principal Judge, i.e., City Sessions Judge, Ahmedabad. Therefore it is requested to allow all the present Special Criminal Applications by transferring the Criminal Miscellaneous Applications for cancellation of bail to the Court No.6 of learned Additional City Sessions Judge, Shri P.P.Bhatt.

4. All these applications are opposed by Shri R.C. Kodekar, learned APP appearing on behalf of the State. It is submitted by him that as rightly observed by the learned Additional City Sessions Judge, Shri M.T. Unadkat, Court No.8 as well as the learned Principal Sessions Judge that all the matters were heard along with another Criminal Misc. Application No. 4626 of 2006 involving common question as regards the competence of the learned Magistrate granting bail under Section 409 of the IPC punishable with imprisonment for life and the same was kept for

final decision meaning thereby all these applications were heard. It is submitted that now when subsequently the applications were moved before the learned Principal City Sessions Judge, Ahmedabad for transferring the Criminal Miscellaneous Applications for cancellation of bail from the Court No.8 of learned Additional City Sessions Judge, Shri M.T. Unadkat to the Court No.6 of learned Additional City Sessions Judge, Shri P.P. Bhatt, and when such applications are rejected, in that case the same could be treated to have been allotted by the learned Principal City Sessions Judge to the Court No.8 of learned Additional City Sessions Judge, Shri M.T. Unadkat. It is also further submitted by Shri Kodekar that the petitioners cannot insist that the applications should be heard by a particular Judge/Court more particularly when there is no allegation levelled against the learned Additional City Sessions Judge, Court No.8 Shri M.T. Unadkat. It is submitted that it appears that only with a view

to delay the proceedings the petitioners are insisting to transfer the case from one Court to another Court and therefore he has requested to dismiss all these applications.

5. Heard the learned advocates appearing on behalf of the respective parties. It is required to be noted that all these applications were placed before the learned Additional City Sessions Judge, Shri M.T. Unadkat, Court No.8 right from January 2007 and along with the same one another Criminal Misc. Application No. 4626 of 2006 involving the same issue with regard to jurisdiction of the learned Chief Metropolitan Magistrate as regards of grant of bail in a case involving offence under Section 409 of the IPC was also placed for hearing. It is the case of the petitioners that from 1.4.2007 the Court business came to be changed and all the Criminal Misc. Applications are required to be heard by the learned Additional City Sessions Judge, Court No.6, Shri P.P. Bhatt and that the learned

Additional City Sessions Judge, Shri M.T. Unadkat, Court No.8 cannot retain the matters more particularly when in the Rojkam it is not mentioned that it is treated as part-heard. All the petitioners submitted applications before the learned Additional City Sessions Judge, Shri Unadkat requesting him to transfer the cases to the Court No.6 of Additional City Sessions Judge, Shri P.P. Bhatt as the same are not treated as part-heard and while rejected the said applications it is specifically observed by the learned Additional City Sessions Judge, Shri M.T. Unadkat that in Criminal Misc. Application No. 4626 of 2006 written arguments are also submitted by the opponents/original-accused at Exhibit 3 however it was kept for final decision along with other matters as common question is involved in all the cases as regards the competence of the learned Magistrate granting bail for the offence under Section 409 of the IPC punishable with imprisonment for life. Thus, the order passed by the learned Additional City Sessions Judge, Court

No.8 seems to convey that all those applications were heard along with Criminal Misc. Application No. 4626/2006 and is kept for final decision. Under the circumstances, the contention on behalf of the petitioners, that in the Rojkam it is not mentioned that applications for cancellation of bail are treated as 'part-heard' and therefore the learned Additional Sessions Judge of Court No.8 cannot retain the matters and on change of Court business the same are required to be transferred, cannot be accepted.

6. It is also the contention on behalf of the petitioners that it is only the learned Principal City Sessions Judge, Ahmedabad, who can allot the work and fix the Court business and therefore when the Court business has been changed by the learned Principal City Sessions Judge the learned Additional City Sessions Judge, Shri M.T. Unadkat, Court No.8 cannot retain the applications for cancellation of bail. It is required to be noted that subsequently the

petitioners have also approached the learned Principal City Sessions Judge, Ahmedabad for withdrawing the cases from the Court No.8 of learned Additional City Sessions Judge, Shri M.T. Unadkat, however all the applications are dismissed by the learned Principal City Sessions Judge by observing that the applications are 'part-heard'. Under the circumstances, when the learned Principal City Sessions Judge has rejected the applications of the petitioners for withdrawing the cases from the Court No.8 of Additional City Sessions Judge, Shri M.T. Unadkat, even it can be said that the learned Principal City Sessions Judge, Ahmedabad, has allotted/returned the cases to the Court No. 8 of learned Additional City Sessions Judge, Shri M.T. Unadkat, and/or the learned Principal City Sessions Judge has permitted the learned Additional City Sessions Judge, Shri M.T. Unadkat to go on with the applications. Under these circumstances also, the prayer of the petitioners to transfer the Criminal Misc. Applications for

cancellation of bail filed by the State from the Court No.8 of learned Additional City Sessions Judge, Shri M.T. Unadkat to the Court No.6 of learned Additional City Sessions Judge, Shri P.P. Bhatt, cannot be accepted.

7. This Court fails to appreciate the anxiety on the part of the petitioners to transfer the applications for cancellation of bail from one Court to another Court when there is no allegation against the Court before whom the applications for cancellation of bail are pending.

8. This Court has gone through the decision of the Hon'ble Supreme Court in the case of *State of Rajasthan [supra].* However, considering the fact that even the learned Principal City Sessions Judge, Ahmedabad, himself has rejected the applications for transferring the cases, the decisions cited above will not be of any assistance to the petitioners. So far as the

decision of this Court relied upon by the petitioners in the case of *Gambhirsinhji Bhavsinhji Padheriya [supra]* is concerned, the same is also not applicable to the facts of the present case.

9. For the reasons stated above, all these petitions are required to be dismissed and are accordingly dismissed. Rule is discharged in case of the petitions. Registry to send back the R & P to the trial Court immediately.

[M.R. Shah, J.]

rmr.